

REMARKS

This Application has been carefully reviewed in light of the Office Action dated July 2, 2007 (“*Office Action*”). Claims 1-33 are pending, and the Examiner rejects all pending claims. Applicants amend Claims 12-22. Applicants respectfully request reconsideration and favorable action in this case.

I. Rejections Under 35 U.S.C. § 101

The Examiner rejects Claims 12-22 under 35 U.S.C. § 101, asserting that the claims are directed to non-statutory subject matter. *Office Action*, p. 2. During an interview conducted on September 27, 2007 with Juliet Mitchell Dirba (an Attorney for Applicants), the Examiner indicated that the claims, as amended, would comply with the requirements of 35 U.S.C. § 101. Accordingly, Applicants respectfully request reconsideration and allowance of Claims 12-22.

II. Rejections Under 35 U.S.C. § 102

The Examiner rejects Claims 1, 8-9, 23, and 30-31 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent Application Publication No. 2004/0111651 issued to Mukherjee et al. (“*Mukherjee*”). Applicants respectfully traverse this rejection and submit that *Mukherjee* does not describe, expressly or inherently, each and every limitation of the claims.

Consider Applicants’ independent Claim 1, which recites:

A method for provisioning protection paths comprising:
determining network configuration information for a network formed by a plurality of nodes;
identifying a working path from a source node to a destination node spanning one or more intermediate nodes, wherein the source node, the destination node, and the intermediate nodes are all nodes in the network;
determining a timing constraint for failure recovery;
identifying potential nodes in the network that satisfy the timing constraint based on the network configuration information;
selecting a protection path from the source node to the destination node spanning a second set of one or more intermediate nodes, the second intermediate nodes selected from the potential nodes; and
setting up the protection path.

Among other aspects, *Mukherjee* fails to teach both “identifying potential nodes in the network that satisfy the timing constraint” and “selecting a protection path . . . spanning a

second set of one or more intermediate nodes, the second intermediate nodes selected from the potential nodes,” as required by Claim 1.

As teaching these claimed aspects, the *Office Action* points to *Mukherjee*, paragraph 54. *Office Action*, p. 4. The cited portion of the reference states:

Next, the system calculates a chain of restorable cycles within the WDM network that guarantee the stated failure-recovery time (step 604). This calculation involves repeatedly selecting a link or series of links for a primary path, and then attempting to find a link or a series of links to form a backup path, which guarantees the stated failure-recovery time. Finally, the system selects a section of each restorable cycle as the primary path between the source and destination (step 606).

Mukherjee, ¶ 54, ll. 7-14 (emphasis added). As can be seen from this quote, *Mukherjee* teaches that, for each potential primary path, the calculation “attempt[s] to find a link or series of links to form a backup path, which guarantees the stated failure-recovery time.” *Id.* However, *Mukherjee* fails to teach (or even suggest) how “to find a link or series of links to form a backup path,” much less the particular steps that *Mukherjee* uses to do so.

On the other hand, Applicants’ Claim 1 includes specific steps for selecting a protection path. First, the claim requires “identifying potential nodes that satisfy the timing constraint.” Then, Claim 1 requires “selecting a protection path . . . spanning a second set of one or more intermediate nodes, the second intermediate nodes selected from the potential nodes.” *Mukherjee* simply fails to teach, or even suggest, these specific steps as by Applicants’ claim.

Thus, *Mukherjee* does not describe, expressly or inherently, each and every limitation required by Claim 1. Independent Claim 23 includes limitations that, for substantially similar reasons, are not taught by *Mukherjee*. Because *Mukherjee* does not disclose, expressly or inherently, every element of independent Claims 1 and 23, Applicants respectfully request reconsideration and allowance of Claims 1 and 23 and their respective dependent claims.

III. Rejections Under 35 U.S.C. § 103

A. Claims 7 and 29:

The Examiner rejects Claims 7 and 29 under 35 U.S.C. § 103(a) as unpatentable over *Mukherjee* in view of U.S. Patent Application Publication No. 2002/0006112 issued to Jaber

et al. ("*Jaber*"). Applicants respectfully traverse the rejection on the ground that the proposed *Mukherjee-Jaber* combination fails to teach or suggest all limitations of the claims.

First, as described above, Applicants have shown that *Mukherjee* fails to disclose all limitations of independent Claims 1 and 23. Accordingly, *Mukherjee* fails to teach or suggest all limitations of Claims 7 and 29 because these dependent claims incorporate the limitations of their respective independent claims. *Jaber* fails to remedy the deficiencies of *Mukherjee*. Because *Jaber* and *Mukherjee*, whether taken alone or in combination, fail to teach all limitations of the claims, Applicants respectfully request reconsideration and allowance of Claims 7 and 29.

Second, Applicants respectfully submit that dependent Claims 7 and 29 include separately patentable limitations. Consider, for example, Applicants' dependent Claim 7, which recites:

The method of Claim 1, wherein determining the timing constraint comprises:
identifying a class of service associated with the working path; and
selecting the timing constraint based upon the class of service.

Applicants respectfully submit that the proposed *Mukherjee-Jaber* combination fails to teach or suggest these claimed aspects.

As teaching these aspects, the *Office Action* points to *Jaber*, paragraph 30. *Office Action*, p. 11. The cited portion of *Jaber* teaches that a network may "distinguish[] and prioritiz[e] traffic based on its type, including CoS [class of service], service level agreement (SLA) and/or other suitable indication of importance of delivery constraints." *Jaber*, ¶ 30. *Jaber* also notes that a network may be "able to deliver time-sensitive traffic within tight time constraints by delaying and/or dropping best effort traffic and other low priority traffic." *Id.*

However, Claim 7 requires both "determining the timing constraint comprises: identifying a class of service associated with the working path; and selecting the timing constraint based upon the class of service" and "identifying potential nodes in the network that satisfy [that] timing constraint." Even assuming, for the sake of argument, that *Mukherjee* teaches identifying potential nodes in the network that satisfy a timing constraint, neither *Mukherjee* nor *Jaber*, whether taken alone or in combination, teach or suggest selecting that timing constraint based upon the class of service.

The *Office Action* arguing that this combination/modification is obvious, stating:

[This modification] reduces the complexity of network management and preserves the topology of the existing routed network and transport isolation enables value added services to be provided through the transport network.

Office Action, p. 11. Applicants respectfully submits that the *Office Action* fails to explain why the proposed modification “reduces the complexity of network management,” “preserves the topology of the existing routed network,” or “enables value added services to be provided through the transport network.” Accordingly, Applicants respectfully submit that the Examiner’s asserted motivation is comprised merely of the Examiner’s subjective and conclusory statements. This is insufficient to establish obviousness: “Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 82 U.S.P.Q.2d 1385 (2007) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

Accordingly, *Jaber* fails to teach or suggest “determining the timing constraint comprises: identifying a class of service associated with the working path; and selecting the timing constraint based upon the class of service,” as is required by dependent Claim 7. The Examiner appears to agree that *Mukherjee* fails to remedy the deficiencies of *Jaber*. See *Office Action*, p. 10 (noting that *Mukherjee* does not teach these claimed aspects).

Applicants thus respectfully submit that *Mukherjee* and *Jaber*, whether taken alone or in combination, fail to teach or suggest every element of Claim 7. Likewise, dependent Claim 29 includes limitations that, for substantially similar reasons, are not taught or suggested by the references. Because *Mukherjee* and *Jaber*, whether taken alone or in combination, fail to teach or suggest every element of dependent Claims 7 and 29, Applicants respectfully request reconsideration and allowance of these claims.

B. Claims 2-4 and 24-26:

The Examiner rejects Claims 2-4 and 24-26 under 35 U.S.C. § 103(a) as unpatentable over *Mukherjee* in view of U.S. Patent Application Publication No. 2004/0218525 issued to Elie-Dit-Cosaque et al. (“*Elie*”).

As described above, Applicants have shown that *Mukherjee* fails to disclose all limitations of independent Claims 1 and 23. Accordingly, *Mukherjee* fails to teach or suggest all limitations of Claims 2-4 and 24-26 because these dependent claims incorporate the

limitations of their respective independent claims. *Elie* fails to remedy the deficiencies of *Mukherjee*.

Thus, *Elie* and *Mukherjee*, whether taken alone or in combination, fail to teach or suggest all limitations of Claims 2-4 and 24-26. Because the references fail to teach all limitations of the claims, Applicants respectfully request reconsideration and allowance of Claims 2-4 and 24-26.

C. Claims 5, 10, 27, and 32:

The Examiner rejects Claims 5, 10, 27, and 32 under 35 U.S.C. § 103(a) as unpatentable over *Mukherjee* in view of U.S. Patent No. 6,728,205 issued to Finn et al. ("*Finn*").

As described above, Applicants have shown that *Mukherjee* fails to disclose all limitations of independent Claims 1 and 23. Accordingly, *Mukherjee* fails to teach or suggest all limitations of Claims 5, 10, 27, and 32 because these dependent claims incorporate the limitations of their respective independent claims. *Finn* fails to remedy the deficiencies of *Mukherjee*.

Thus, *Finn* and *Mukherjee*, whether taken alone or in combination, fail to teach or suggest all limitations of Claims 5, 10, 27, and 32. Because the references fail to teach all limitations of the claims, Applicants respectfully request reconsideration and allowance of Claims 5, 10, 27, and 32.

D. Claims 6 and 28:

The Examiner rejects Claims 6 and 28 under 35 U.S.C. § 103(a) as unpatentable over *Mukherjee* in view of *Elie* and further in view of *Finn*.

As described above, Applicants have shown that *Mukherjee* fails to disclose all limitations of independent Claims 1 and 23. Accordingly, *Mukherjee* fails to teach or suggest all limitations of Claims 6 and 28 because these dependent claims incorporate the limitations of their respective independent claims. *Elie* and *Finn* fail to remedy the deficiencies of *Mukherjee*.

Thus, *Elie*, *Finn*, and *Mukherjee*, whether taken alone or in combination, fail to teach or suggest all limitations of Claims 6 and 28. Because the references fail to teach all

limitations of the claims, Applicants respectfully request reconsideration and allowance of Claims 6 and 28.

E. Claims 11 and 33:

The Examiner rejects Claims 11 and 33 under 35 U.S.C. § 103(a) as unpatentable over *Mukherjee* in view of U.S. Patent No. 5,914,798 issued to Liu ("*Liu*").

As described above, Applicants have shown that *Mukherjee* fails to disclose all limitations of independent Claims 1 and 23. Accordingly, *Mukherjee* fails to teach or suggest all limitations of Claims 11 and 33 because these dependent claims incorporate the limitations of their respective independent claims. *Liu* fails to remedy the deficiencies of *Mukherjee*.

Thus, *Liu* and *Mukherjee*, whether taken alone or in combination, fail to teach or suggest all limitations of Claims 11 and 33. Because the references fail to teach all limitations of the claims, Applicants respectfully request reconsideration and allowance of Claims 11 and 33.

CONCLUSION

Applicants have made an earnest attempt to place the Application in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of this Application. If the Examiner feels that a telephone conference or an interview would advance prosecution of the Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

Although no fees are believed to be currently due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicants

A handwritten signature in black ink, appearing to read 'K-P', with a long horizontal flourish extending to the right.

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